



Republic v Kenya Revenue Authority; Peter Muhoro Karanja (Exparte) (Judicial Review Application E003 of 2021) [2022] KEHC 341 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEHC 341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E003 OF 2021**

FA OCHIENG, J

APRIL 28, 2022

BETWEEN

REPUBLIC APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

AND

PETER MUHORO KARANJA EXPARTE

RULING

1. This Ruling is on the Preliminary Objection dated 5th September 2021, which was in the following terms;

"1. The application is incompetent, legally unsuitable and amounts to forum shopping, and as such an abuse of the court process.

2.

That the court lacks jurisdiction to hear the application on the grounds that there exists statutory dispute resolution mechanism under Section 52 (1) of the [Tax Procedures Act](#).

3.

The application is filed contrary to the provisions of Section 9 (2) of the [Fair Administrative Action Act](#).

4.

The application filed, therefore, contravenes the express provisions of Section 52 (1) of the [Tax Procedures Act](#).



5.

The application has also been filed contrary to the provisions of Sections 12 and 13 of the [Tax Appeals Tribunal Act](#).

6.

That the application is therefore an abuse of the court process and a waste of judicial resources.”

2. It is common ground that pursuant to Section 9 (2) of the Fair Administrative Act, the Court is required to refrain from reviewing an administrative action unless the statutory mechanisms for appeal or review have been exhausted.

3. Section 52 (1) of the [Tax Procedures Act](#) provides as follows;

“A person who is dissatisfied with an appealable decision may appeal the decision to the Tribunal in accordance with the provisions of the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013).”

4. It is now firmly established in law that when [the Constitution](#) or an Act of Parliament prescribes a procedure for the redress of any particular grievance, the said procedure ought to be strictly followed.

5. Whilst acknowledging that legal position, the Applicant has asserted that the law does not set out any procedure to appeal against a decision that was made out of time.

6. Pursuant to Section 51 (11) of the [Tax Procedures Act](#);

“The Commissioner shall make the objection decision within sixty days from the date of receipt of –

- a. the notice of objection or
- b. any further information the Commissioner may require from the taxpayer, failure to which the objection shall be deemed to be allowed.”

7. The Preliminary Objection herein is premised upon an objection decision made on 8th July 2021.

8. According to the Respondent, the objection decision of 8th July 2021 was well within the 60 days prescribed under the Act.

9. However, the Applicant’s position was that the 60 days prescribed period lapsed on 7th July 2021. The said position was raised at paragraphs 10 and 11 of the Applicant’s Statement which was filed in Court on 27th July 2021.

10. In the case of *Republic vs Kenya Revenue Authority Ex parte M-kopa Kenya Limited*, Odunga J. held that when the Respondent had defaulted in making an objection decision within 60 days, as envisaged under Section 51 (11) of the [Tax Procedures Act](#), 2015, the said Objection was deemed to have been allowed.

11. In arriving at that pronouncement, the learned Judge made use of the words of the statutory provision.

12. I am in full agreement with the decision in that case, as the statutory provision is so clear that it does not require any interpretation.



13. Accordingly, I find that there is a dispute on a matter of fact, concerning the date when the 60 days would have lapsed.
14. The law governing preliminary objections is well settled. In the celebrated case of *Mukisa Biscuit Company Limited vs Westend Distributors Limited* [1969] E.A. 696, it was held that a preliminary objection can only be raised when, *inter alia*, the pure point of law is argued on the assumption that the facts pleaded by the party against whom the preliminary objection was being raised, were accurate.
15. In this case, the Respondent was contesting the factual assertion concerning the date when the 60 days lapsed.
16. Therefore, in order to be able to make a decision on whether or not the Applicant could have appealed to the Tax Appeals Tribunal, the Court would first need to decide if the objection decision was appealable.
17. In the event, I find that the preliminary objection is not sustainable; and it is therefore dismissed.
18. However, the matters raised by way of the said preliminary objection remain alive, and may be canvassed as a part of the Respondent's answer to the substantive application. For that reason, although the preliminary objection has been dismissed, I order that the costs thereof shall be in the cause.
19. The party who succeeds in the substantive application shall also be awarded the costs of the preliminary objection.

DATED, SIGNED AND DELIVERED AT KISUMU

THIS 28TH DAY OF APRIL 2022

FRED A. OCHIENG

JUDGE

